

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated June 22, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-11 are pending in the Application. Claims 1 and 6 are independent claims. Claims 9-11 are added by this amendment. By means of the present amendment, claims 7 and 8 are amended to correct an obvious typographic error noted upon review of the claims. By these amendments, claims 7 and 8 are not amended to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents. Applicants furthermore reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

Furthermore, the Applicants have corrected herein an obvious clerical error introduced in an amendment submitted on August 6, 2008 provided in response to an Office Action dated May 8, 2008.

In the Office Action, the drawings were objected, amongst other matter, because it was indicated that "Figure 5A should be designated by a legend such as -- PRIOR ART -- since only that

which is old is illustrated." See, Office Action dated May 8, 2008, page 3. In response, the Amendment was submitted on August 6, 2008 wherein in addition to labeling FIG. 5A with the legend, PRIOR ART, each of FIGs. 3, 4A, 4B, 5B and 6 were similarly labeled. As made clear from a reading of the specification of present application, (emphasis added) "[a]n issue for both the recordable and rewritable DVD formats is the limited capacity and therefore recording time because only single-stacked media are present with a maximum capacity of 4.7 GB." (See, present application, page 1, lines 13-15.) Accordingly, it is clear that the figures showing a dual-layer disk in accordance with the present system should not be labeled "PRIOR ART". Accordingly, replacement sheets including FIGs. 3, 4A, 4B, 5B and 6 are enclosed, wherein the legend PRIOR ART is removed. Applicants respectfully request approval of the enclosed proposed drawing changes.

In the Office Action, it is indicated that the I.D.S. filed on November 10, 2005 has been partially considered since the references to European Patent Application No. EP1150291(A2) as presented was not complete and ended at page 8. Further, it is indicated that the copy of Japanese Patent Application No.

JP11066622 was missing. An I.D.S. is submitted herewith including complete copies of the cited references and an English language translation of JP11066622. Accordingly, consideration of the cited references is respectfully requested.

In the Office Action, claim 5 is rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement for containing features not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time of the application was filed had possession of the claimed invention. In effect, it is alleged that the features of claim 5 are not disclosed in the specification.

This rejection is respectfully traversed.

It is respectfully submitted that the element that is objected to, is provided in the claims as originally submitted in the patent application. In fact, claim 5 as originally submitted provided the subject matter that is alleged to be new matter.

MPEP §608.01(1) in a section entitled "Original Claims - 600 Parts, Form, and Content of Application" makes clear that (emphasis added) "[i]n establishing a disclosure, applicant may rely not only on the description and drawing as filed but also on the original

claims if their content justifies it ... [When] such original claim itself constitutes a clear disclosure of this subject matter, then the claim should be treated on its merits, and requirement made to amend the ... description to show this subject matter. The claim should not be attacked either by objection or rejection because this subject matter is lacking in the ... description. It is the ... description that are defective, not the claim."

As made clear by the MPEP, a limitation provided in an originally provided claim element should not be objected or rejected when the originally submitted claim itself constitutes a clear disclosure of the claimed subject matter.

Further the MPEP §2163.03 makes clear that (emphasis added) "there is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed. In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). Consequently, rejection of an original claim for lack of written description should be rare."

The MPEP §2163.06 states that (emphasis added) "if an applicant amends or attempts to amend the abstract, specification or drawings of an application, an issue of new matter will arise if the content of the amendment is not described in the application as

filed." This section of the MPEP makes clear that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

The Applicants have elected to amend the specification to include the subject matter recited in claim 5.

Accordingly, withdrawal of this rejection under 35 U.S.C. §112, first paragraph of claim 5 is respectfully requested.

In the Office Action, claims 1 and 2 are rejected under 35 U.S.C. §102(b) over Applicant's PRIOR ART, specifically, FIGs. 3, 4A, 4B, 5A, 5B and 6. Claims 3-8 are rejected under 35 U.S.C. §103(a) over Applicant's PRIOR ART, specifically, FIGs. 3, 4A, 4B, 5A, 5B and 6. These rejections are respectfully traversed. It is respectfully submitted that claims 1-11 are allowable over Applicant's PRIOR ART for at least the following reasons.

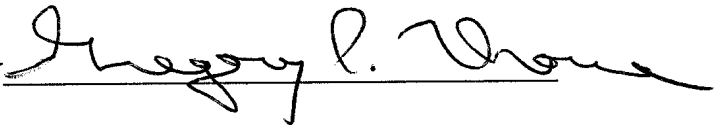
It is respectfully submitted that the labeling of FIGs. 3, 4A, 4B, 5B and 6 as PRIOR ART clearly was in error in that the specification makes clear, as discussed above, for recordable and rewritable DVD formats, only single-stacked media are present in the prior art.

Since no prior art is cited in rejecting the claims, it is respectfully submitted claims 1-11 are allowable and an indication to that effect is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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Enclosure: Replacement drawing sheets (4 sheets including FIGs. 3, 4A, 4B, 5B and 6.)

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